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SUPREME COURT OF THE UNITED STATES.

October Term, 1945.

No. 1094.

WILLIAM G. BARNES,

Petitioner,

vs.

CITY OF PHILADELPHIA.

ANSWER AND BRIEF OF CITY OF PHILADELPHIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The answer of the City of Philadelphia, by its attorneys, Frank F. Truscott, City Solicitor, and Abraham Wernick, Assistant City Solicitor, to the petition for writ of certiorari to the Superior Court of the State of Pennsylvania, respectfully represents:

(1) The petitioner prays that a writ of certiorari issue herein to review a certain final decision of the Superior Court of the State of Pennsylvania.

This final decision was rendered by the Superior Court of Pennsylvania on November 19, 1945; whereas a typewritten petition for writ of certiorari was filed in this Court on April 10, 1946, which was more than three months after the entry of the final judgment by the Superior Court. The jurisdiction of the Superior Court of the State of Pennsylvania is final in all actions, at law or in equity, where the amount or value thereof really in controversy be not greater than $2,500., exclusive of costs. (Act of June 24, 1895, P. L. 212; amended May 5, 1899, P. L. 248, and further amended March 2, 1923, P. L. 3, No. 2; 17 P. S. 184.)

(2) The petitioner is in error when he states that in going to and from his work he does not pass through the City proper, as there is no legally admissible evidence in the record to that effect. Assuming, however, that the evidence which was stricken from the record should be considered to the effect that the petitioner travelled to the Philadelphia Navy Yard by boat from New Jersey, it was further testified that the boat travelled in the space between the Navy Yard and the center of the Delaware River; and since the boundaries of Philadelphia run to the center of the river, the petitioner then passed through the City of Philadelphia with the same force and effect as if he were walking on the streets of Philadelphia.

(3) The petitioner is further in error in stating that *all* of the cases where this Court refused to allow writs of certiorari were bills in equity asking prior restraint of enforcement, since CITY v. SCHALLER, 148 Pa. Super. Ct. 276, 25 A. (2d) 406; 317 U. S. 649, 87 L. ed. 522, involved a civil suit against the taxpayer wherein the taxpayer invoked the provisions of the Federal Constitution as a defense in resisting the right of the City of Philadelphia to collect the City income tax from a Federal employe working in the Philadelphia Navy Yard.

(4) The Philadelphia Income Tax Ordinance was enacted on December 13, 1939 and became effective on January 1, 1940 as to all residents of Philadelphia, regardless of where

they earned their income, and as to non-residents who were earning their income in Philadelphia, with the exception of non-residents who were performing services for the Federal Government in Federal areas, title to which were in the United States of America. As to the latter, the income tax authorities ruled that the provisions of the Philadelphia Income Tax Ordinance applied to all compensation earned after December 31, 1940, under Public Act 819, enacted by Congress on October 9, 1940, c. 787, 54 Stat. 1060, 4 U. S. C. A. 14. Since January 1, 1941 up until the present time many thousands of non-resident Federal employes performing services both at League Island Navy Yard and other Federal reservations have paid millions of dollars of taxes without any protest and without any understanding that it would be refunded.

A group of residents of New Jersey are the only ones who protested the payment of this tax and, in order to enable the members of this group to more easily pay the tax, the Receiver of Taxes agreed to accept the delinquent taxes in installment payments, but the representative of the group insisted that the Receiver of Taxes insert a clause that if by some chance it were held that the tax was not collectible then refunds would be made. Since that time, however, on December 29, 1945 Council of the City of Philadelphia adopted an Ordinance abating all interest and penalties on delinquent taxes due from wage earners, provided all delinquent taxes be paid by February 15, 1946, and many non-resident Federal employes paid their taxes without protest, including the seven defendants whose names appear in the record filed with this Court.

The petitioner is the only one who is still resisting the payment of the tax although the Ordinance has been in force since January 1, 1940. He has been employed at the League Island Navy Yard since 1940 and in 1943 earned $3,449.25 and in 1944 earned $4,649.74 (R. 36a).

(5) There has been collected since the Ordinance has been in force over $120,000,000. and approximately one-

third of this sum came from non-residents. At one time there were over 180,000 Federal employes performing services in Philadelphia. So that if, at this late date, the petitioner should succeed, it would mean that the City of Philadelphia would be flooded with claims for refunds by many thousands of non-residents for sums involving many millions of dollars, the result of which would be financial disaster to the City of Philadelphia, as the money has been spent for municipal purposes.

For reasons appearing in the accompanying brief, the City of Philadelphia prays your Honorable Court to dismiss the petition for a writ of certiorari.

And defendant will ever pray.

CITY OF PHILADELPHIA,
By:
FRANK F. TRUSCOTT,
City Solicitor,
ABRAHAM WERNICK,
Assistant City Solicitor,
Counsel for City of Philadelphia.

BRIEF IN SUPPORT OF ANSWER IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

I.

STATEMENT OF QUESTIONS INVOLVED.

(1) Was the Court justified in taking judicial notice that League Island was within the territorial limits of Philadelphia?

(2) When Congress by Public Act 819 authorized taxing

authorities not only to levy but also to *collect* income taxes within a Federal area within such State to the same extent as though such area was not a Federal area, will a writ of capias lie to collect penalties for failure to file returns and pay income taxes imposed by the City of Philadelphia from a non-resident employed at League Island?

(3) Must a State accept a retrocession or relinquishment of jurisdiction from the Federal Government before it becomes valid?

II.

ARGUMENT.

(1) Was the Court justified in taking judicial notice that League Island was within the territorial limits of Philadelphia?

The Trial Court as well as the Superior Court, relying on KIKER v. PHILA., 346 Pa. 624, 31 A. (2d) 289, 320 U. S. 741, 88 L. ed. 439, took judicial notice that League Island was within the territorial limits of Philadelphia. That the Court was fully justified in this action is clearly demonstrated in the opinion of the Supreme Court of Pennsylvania in the Kiker Case. The Supreme Court of Pennsylvania said:

> "League Island lies on the westerly bank of the Delaware River, just above the mouth of the Schuylkill, and originally was a part of the City of Philadelphia."

Several legal authorities are cited to support the principle that the Court may take judicial notice of this fact. The facts are in accord with the judicial knowledge of the Court.

The Act of February 10, 1863, P. L. 24, under which title to League Island was ceded to the United States, reads in part:

> "That the consent of the Commonwealth of Pennsyl-

vania is hereby granted to the United States of America, to purchase and acquire title to all that island in the Delaware River, at and above the mouth of the Schuylkill River, in the City and County of Philadelphia, called and known as 'League Island' * * *."

It will thus be seen from the Act of Assembly cited, League Island is described as being in the City and County of Philadelphia.

The ordinance of Council of April 9th, 1864 (page 151 of Published Ordinances) authorizes the City Solicitor to examine the title to the whole of League Island which is described as being in the First Ward of the City of Philadelphia and the sum of $340,000.00 is appropriated for the purchase of League Island from the Pennsylvania Company, and the Mayor is requested to tender League Island to the United States Government as a location for a Navy Yard or Naval Depot.

In the Ordinance of Council of July 23, 1867 (page 261 of Published Ordinances) it is stated that under An Act of Congress of February 18, 1867, the Secretary of the Navy was authorized to accept title to League Island from the City of Philadelphia.

This is further record proof of which the Court could take judicial notice that League Island belonged to Philadelphia and was a part of it.

It is quite true that this State, when ceding to the Government title to League Island, granted to the Government exclusive jurisdiction over League Island reserving unto itself only the right to serve civil and criminal processes; and the City recognizes the fact that when it did so it had no power, as the law then stood, to impose taxes upon persons working within such Federal Reservation; *but it does not follow that League Island did not remain physically within the geographical limits of Philadelphia.*

The Legislature, in the Act of February 2, 1854, P. L. 21, commonly known as "The Consolidation Act", fixed the boundary lines of the City and County of Philadelphia and

the various wards contained therein. Section 2 of said Act provides that the City shall be divided into Wards, and then described the boundaries of twenty-four wards. The First Ward is described as follows:

> "FIRST WARD, That part thereof bounded as follows: Beginning at Wharton street and the river Delaware; thence along Wharton street to the Passyunk road; thence along the Passyunk road to Little Washington street; thence along Washington to Broad street; thence along Broad street to South street; thence along South street to the river Schuylkill; thence along the river Schuylkill to its junction with the river Delaware; thence along the river Delaware to the place of beginning, *together with League Island.*" (Italics supplied.)

It will thus be observed that League Island is included within the boundaries of the First Ward of the City and County of Philadelphia and is bounded by the Delaware River; and since the Act of 1854 further provides in Section 2, that when a river is named as a boundary the center thereof shall be understood, *it follows that the southern boundary of Philadelphia runs to the center of the Delaware River.*

It is respectfully urged that the Superior Court of Pennsylvania was bound to take judicial notice that League Island was within the territorial limits of Philadelphia because it is true as a physical fact and also because the Supreme Court of Pennsylvania so held. It is further respectfully urged that this decision is binding upon your Honorable Court.

(2) When Congress by Public Act 819 authorized taxing authorities not only to levy but also to COLLECT income taxes within a Federal area within such State to the same extent as though such area was not a Federal area, will a writ of capias lie to collect penalties for failure to file returns and pay income taxes imposed by the City of Philadelphia from a non-resident employed at League Island?

Section 2 (a) of Public Act 819, enacted on October 9, 1940, 54 Stat. 1060, 4 U. S. C. A. 14, appears on pages 15 and 16 of the petitioner's brief. It is there provided that no person shall be relieved from liability for any income tax levied "* * * by any duly constituted taxing authority * * * by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area * * *." It further provides:

> "* * * and such State or taxing authority shall have full jurisdiction and power to levy and *collect* such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area." (Italics supplied.)

It is quite obvious from this language that if League Island Navy Yard is a Federal area within the State of Pennsylvania and the City of Philadelphia, that Philadelphia, after December 31, 1940, had *full jurisdiction and power* not only to levy an income tax therein but also to *collect* such a tax.

Let us, therefore, consider whether League Island Navy Yard falls within the definition of "Federal area," as contained in Public Act 819.

Section 6 of this Act, which appears on page 16 of the petitioner's brief, defines "Federal area" as follows:

> "The term 'Federal area' means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of

the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State shall be deemed to be a Federal area located within such State."

Since the Supreme Court of Pennsylvania in the Kiker Case held that League Island "is now physically a part of the mainland of this Commonwealth * * *" and is geographically within the limits of Philadelphia, then it follows that League Island Navy Yard is a Federal area located within the exterior boundaries of the State of Pennsylvania, under the definition contained in Section 6 of Public Act 819.

Being within the territorial limits of Philadelphia, then any person, even though a non-resident, performing services therein would be subject to the provisions of the Philadelphia Income Tax Ordinance with the same force and effect as if he performed services in any other portion of Philadelphia.

The Philadelphia Income Tax Ordinance of 1938, which was similar to the provisions of the Income Tax Ordinance of December 13, 1939, page 656, was sustained by the Supreme Court of the State of Pennsylvania in BUTCHER v. PHILA., 333 Pa. 497, 6 A. (2d) 298, and it was held to apply both to non-residents performing services in Philadelphia as well as to residents of Philadelphia, regardless of where they performed services.

The City Income Tax Ordinance of December 13, 1939, page 656 was sustained in ——

DOLE v. PHILA., 337 Pa. 375, 11 A. (2d) 163;
GUERRA v. PHILA., 30 Fed. Supp. 791;
STOUDT v. PHILA., 38 D. & C. 222 (Pa.);
MARSON v. PHILA., 342 Pa. 369, 21 A. (2d) 228;
CITY OF PHILA. v. SCHALLER, 148 Pa. Super. Ct. 276, 25 A. (2d) 406; 317 U. S. 649, 87 L. ed. 522;

KIKER v. PHILA., 346 Pa. 624, 31 A. (2d) 289, 320 U. S. 741, 88 L. ed. 439;
PENNA. CO. v. PHILA., 346 Pa. 406, 31 A. (2d) 137;
PHILA. v. SPEESE, et al., 48 D. & C. 61 (Pa.).

The aforementioned cases recognized that the tax could be collected both from residents of Philadelphia, regardless of where they were employed, and from non-residents who perform services in Philadelphia.

In so doing, they were following the decision of your Honorable Court in SHAFFER v. CARTER, et al., 252 U. S. 37, 64 L. ed. 445, and TRAVIS, &c. v. YALE & TOWNE MFG. CO., 252 U. S. 60, 64 L. ed. 460.

If the petitioner were performing services in any portion of the City of Philadelphia he would be liable for the City income tax, under the aforementioned decisions; and if he failed to comply with the provisions of the City Income Tax Ordinance by not filing a return or paying the tax, he would be subject to the provisions of Section 9 of the said Ordinance, set forth fully on page 22 of the petitioner's brief, which is a penalty of $100. and costs for each such offense or imprisonment for not more than 30 days for the non-payment of such penalty and costs within ten days from the imposition thereof.

The City of Philadelphia, in order to collect the penalty of $100. for the failure of a taxpayer to file a return or pay the tax, could resort to a writ of capias under the provisions of the Act of July 12, 1842, P. L. 339, 12 P. S. 257.

Prior to 1842 a writ of capias could be issued in all civil actions.

12 STAND. PRACT., p. 428.

The Act of July 12, 1842, P. L. 339, 12 P. S. 257, abolished imprisonment for debt in all civil proceedings, "excepting in proceeding as for contempt, to enforce civil remedies, *action for fines or penalties,* or on promises to marry, on moneys collected by any public officer, or for any miscon-

duct of neglect in office, or in any professional employment, in which cases the remedies shall remain as heretofore: * * *." (Italics supplied.)

It will thus be seen that the Act of 1842 did not abolish imprisonment for debt in "actions for fines or penalties". Hence the City of Philadelphia was fully justified in issuing a capias for the collection of the penalties provided for in Section 9 of the Philadelphia Income Tax Ordinance. This is supported by the following authorities :

In 12 STAND. PA. PRAC., page 428, it is stated:

> "There is, however, also authority for the commencement of such an action by capias or warrant of arrest."

On page 429 of the same Volume, it is stated:

> "A practice arose very early of commencing proceedings for the violation of a municipal ordinance imposing a penalty by capias or warrant, and it seems always to have been the understanding that aldermen and justices of the peace might issue writs of capias in such cases."

In MILTON BORO. v. HOAGLAND, 3 Pa. C. C. Reps. 283, 285, the Court said:

> "The practice in the City of Philadelphia is to commence such proceedings by capias or warrant of arrest, as appears by many of the reported cases."

In any event, since the highest Court of the State of Pennsylvania so decided this matter, it is binding upon your Honorable Court, as it involved purely a question of State procedure.

If a writ of capias would lie to collect the penalty of $100. against the petitioner if he were performing services in any portion of the City of Philadelphia, it is difficult to understand why it could not be asserted against the petitioner when he performed services in League Island Navy Yard, since League Island Navy Yard has been held to be within the territorial limits of the State of Pennsylvania and the City of Philadelphia.

When Congress, in Section 2 of Public Act No. 819, not only took away from a person residing within a Federal area the right to resist an income tax, by reason of his receiving income for services performed in such area, but also granted to such taxing authority full jurisdiction and power not only to levy but also to *collect* such income tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area, then it is respectfully urged, that Philadelphia had the right to use the same remedies to collect the tax against non-residents employed in League Island Navy Yard as would be used against a non-resident working in any other portion of Philadelphia.

The method of collection recognized in the State of Pennsylvania is to issue a writ of capias. Hence, if a writ of capias lies against a non-resident working in Philadelphia, it would apply against a non-resident working in League Island Navy Yard after December 31, 1940; otherwise, the words "and collect such tax in any Federal area", appearing in Public Act 819, would be meaningless.

There is no merit in the contention advanced by the petitioner that since the Federal Government still has title to League Island Navy Yard Philadelphia could not denominate as an offense conduct committed in the Navy Yard and proceed to punish it.

It has already been demonstrated that League Island Navy Yard is within the territorial limits of Philadelphia.

The boundaries of Philadelphia run to the center of the river. The petitioner was performing services within the limits of the City of Philadelphia proper. He received compensation for such services. He was required to file a return with the Receiver of Taxes revealing the compensation so received and also to pay a tax thereon. He refused to do so. He was, therefore, liable for a penalty of $100. under Section 9 of the Ordinance. The City of Philadelphia had a right to collect such a penalty by the issuance of a writ of capias.

If the petitioner's contention should prevail it would mean that a non-resident performing services within Philadelphia would never be subject to the penalty of $100. for violations of the provisions of the ordinance, and Philadelphia could never recover such penalties by the issuance of a writ of capias; because there is no difference between a non-resident performing services in any portion of the City of Philadelphia and one who performs services in League Island Navy Yard, in view of the fact that Public Act 819 specifically provided that for the purpose of collecting income taxes such Federal area shall be considered "as though it was not a Federal area".

It is idle for the petitioner to contend that no municipal benefits were available to him. This contention was fully answered by the Supreme Court of Pennsylvania in the Kiker Case and your Honorable Court refused to disturb this decision. Therefore, there is no reason for interference at this time.

The non-residence of the petitioner is of no moment in this case as the mere privilege of earning money in a community by a non-resident is subject to a tax.

SHAFFER v. CARTER, 252 U. S. 37, 64 L. ed. 445;
SHAFFER v. HOWARD, 250 Fed. 873;
YERIAN v. TERRITORY OF HAWAII, 130 F. (2d) 786 appearing on page 21 of the petitioner's brief.

Petitioner further argues that before Philadelphia could tax non-resident Federal employes, performing services in Federal areas, additional legislation was necessary since the Ordinance of December 13, 1939 can not apply to a situation created after December 31, 1940 by Public Act 819, as the City had no power to impose income taxes against non-residents earning compensation in League Island on December 13, 1939.

In advancing such a contention the petitioner overlooks the language of the Supreme Court of Pennsylvania in the case of BLAUNER'S, INC. v. PHILADELPHIA, 330 Pa. 342, 348, 198 A. 889:

> "We think the same power is vested in the City of Philadelphia by the Sterling Act, supra, which authorizes it 'to levy, assess, and collect, or provide for the levying, assessment and collection' of taxes * * * Under such a broad legislative grant the City's power of collection is limited only by constitutional restriction."

In other words, the State of Pennsylvania delegated to the City of Philadelphia under the Sterling Act, August 5, 1932, P. L. 45, 53 P. S. 4613, in such fields of taxation where the State has not entered, the same broad powers possessed by the State. Consequently, if in 1939 the State had an income tax which did not at that time apply to non-resident Federal employes earning compensation at League Island, after January 1, 1941, the State would not have to adopt a special Act agreeing that it would accept the benefits of Public Act 819 before it would have the right to include within such income tax the compensation earned by a non-resident Federal employe at League Island.

This was squarely decided by the Superior Court of Pennsylvania in the case of PHILADELPHIA v. SCHALLER, 148 Pa. Super. Ct. 276, 282, 25 A. (2d) 406, 410, 317 U. S. 649, 87 L. ed. 522, where the Court said:

> "When the disability of the state to tax federal incomes was removed, there was no need for a reenactment of the legislation to reach incomes formerly ex-

empt; the powers originally granted, broad enough to include all income regardless of the source, were sufficient for the purpose."

Since the Supreme Court of Pennsylvania refused an allocatur and this Court denied a writ of certiorari, it may be assumed that the language quoted hereinabove from the opinion of the Superior Court was approved by the State Supreme Court and this Court.

If this be true as regards the State of Pennsylvania, then it follows that it should be applicable to the powers of the City of Philadelphia granted to it by the State to impose income taxes. Hence, since the City's power of collection of income taxes is limited only by constitutional restrictions, and since the State legislature transferred all the taxing powers possessed by the State, then there would be no occasion for the City of Philadelphia to obtain consent from the State of Pennsylvania to include within its Income Tax Ordinance of 1939 the compensation earned by non-resident Federal employes at League Island.

In other words, Philadelphia stepped into the shoes of the State of Pennsylvania as regards the right and power to impose income taxes; and since Pennsylvania would not be required to adopt a new law imposing income taxes on non-residents working in the Navy Yard after January 1, 1941 if prior to that time it had a general income tax, it follows that the City of Philadelphia did not have to adopt a new ordinance.

In YERIAN v. TERRITORY OF HAWAII, 134 F. (2d) 786, the Act imposing the tax was enacted in 1933. The question involved was whether the Act applied to salary earned in December, 1939 by a non-resident employe of the Home Owners Loan Corporation. Nevertheless, the Court held that the provisions of the Act applied even though at the time it was enacted the salary of a Federal employee was exempt from taxation.

It must be borne in mind that the cession of League Island to the Federal Government by the State of Pennsylvania

was not a cession of absolute and perpetual jurisdiction. It was in effect a mere suspension of jurisdiction. *The State jurisdiction was not extinguished by the grant but merely suspended.* There was a reversion left in the State. This is so, because the purposes for which the grant was made were temporary. The right to exercise the jurisdiction granted was to be exclusive while it continued, but it was to be a mere temporary right.

RENNER v. BENNETT, 21 Ohio St. Rep. 431, 445.

Since the cession of jurisdiction merely amounted to a suspension thereof until the jurisdiction would be reverted to the State, it follows that when such reversion takes place that the law existing when the cession took place would apply when the reversion took place without any special legislation.

It is, therefore, respectfully suggested that in view of this question having been finally determined both in the Schaller and in the Kiker Cases, it should not be subject to review at this time.

Petitioner further argues that there is no express authority granted to the municipality by the Pennsylvania Legislature to tax persons working in League Island. No such express authority is necessary. The ordinance imposes a tax upon non-residents performing services in Philadelphia, and if League Island is within the territorial limits of Philadelphia then persons working in League Island are subject to the provisions of the ordinance.

The power to impose a tax authorized by City Council in 1939, as to non-residents employed in Federal reservations, was merely held in abeyance or suspended until such time as the jurisdiction would be restored to that territory. This jurisdiction was restored on January 1, 1941 by Congress; and it was so held both in the Schaller and Kiker Cases, as well as in other cases.

(3) Must a State accept a retrocession or relinquishment of jurisdiction from the Federal Government before it becomes valid?

It is respectfully submitted that when Congress, by Public Act 819, relinquished its exclusive jurisdiction in regard to income taxes and permitted a State or taxing authority to impose such taxes in Federal areas with the same force and effect as if there were never any Federal areas, it was conferring a benefit upon Philadelphia or any other taxing authority which had granted exclusive jurisdiction to the Federal Government.

Therefore, the acceptance of such limited jurisdiction and power is presumed in the absence of any dissent on the part of the State of Pennsylvania or the City of Philadelphia.

Public Act 819 has been in force since January 1, 1941, and the Legislature of the State of Pennsylvania has met on many occasions since that time and has not placed on record any dissent or dissatisfaction with the Act, which is the most conclusive evidence of the fact that it was satisfied with it.

Apart from the fact that it is presumed to have accepted the retrocession, it is respectfully submitted that it was not necessary for the State of Pennsylvania to affirmatively accept retrocession or relinquishment of jurisdiction from the Federal Government.

RENNER v. BENNETT, 21 Ohio St. Rep. 431 (1871).

This case was cited by the United States Supreme Court in ARLINGTON HOTEL CO. v. FANT, 278 U. S. 445, 455; 73 L. ed. 447, 452; by Circuit Judge Stone in the case of WILLIAMS v. ARLINGTON HOTEL CO., 22 Fed. (2d) 669, 671; by Circuit Judge Taft in In re THOMAS, 82 Fed. Rep. 304, 308, and in YELLOW CAB TRANSIT CO. v. JOHN-

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542, 546; 29 L. ed.

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PACIFIC RY. CO. v. McGLINN, 11
270, 271, where it was said:

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continue in force until abrogated or changed by the new government or sovereign."

In the case of WILLIAMS v. ARLINGTON HOTEL CO., 22 F. (2d) 669, 671, Judge Stone said:

"The McGlinn case is direct authority for the contention made by plaintiff in error that the laws of the state in existence at the time of the cession continue upon the reservation where not inconsistent with the laws of the United States or where not abrogated by Congress after the cession."

In the case of FORT LEAVENWORTH RAILWAY CO. v. LOWE, 114 U. S. 525, 542, 29 L. ed. 264, 270, this Court said:

"It is necessarily temporary, to be exercised as long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used the jurisdiction reverts to the state."

In the instant case the cession of exclusive jurisdiction over League Island was made on this condition:

"Providing, however, that the cession * * * made shall continue in force as long as the * * * territory shall be used by the Government of the United States for the purpose of a navy yard, and *no longer*." (Italics supplied.)

It may be inquired what would happen if the Government ceased to use League Island for the purposes of a Navy Yard. Under the Act of cession, the Federal Government would cease to have exclusive jurisdiction thereof.

Suppose Pennsylvania never formally accepted jurisdiction over League Island, or, as was done in the Ohio case, suppose Pennsylvania refuses to accept jurisdiction over League Island? Would jurisdiction over League Island then be suspended like Mohammed's coffin so that neither the Federal Government nor the State of Pennsylvania would have any jurisdiction thereof? Such a situation is unthinkable. And yet, if a recession or surrender of jurisdiction by

the Federal Government must be formally accepted by the State, then such an absurd result would follow.

If jurisdiction over League Island would immediately vest in the State of Pennsylvania when the Government ceased to use League Island as a Navy Yard, regardless of whether Pennsylvania would formally accept such jurisdiction, the same result would follow when Congress voluntarily surrenders or yields a portion of its original jurisdiction to the State.

In the dissenting opinion in the Kiker case it is pointed out that since Congress had to formally accept exclusive jurisdiction, it follows that the State must formally accept a recession of said jurisdiction. The writer of the dissenting opinion, however, overlooks the fact that the reason for the necessity of formal acceptance by Congress was because in the Act of cession it was stated that such exclusive jurisdiction shall only become effective after title to the land shall be *accepted by Congress;* but nowhere is it stated that a recession of such jurisdiction shall not become effective until formally accepted by the State of Pennsylvania.

Since the jurisdiction that was granted to the Federal Government over League Island was necessarily temporary in the sense that it terminated when League Island was no longer used as a Navy Yard, the thought expressed by the Supreme Court of Ohio that the State jurisdiction over such ceded territory has been temporarily suspended applies; and if such jurisdiction has only been temporarily suspended then no logical reason appears why Congress cannot return a portion of said jurisdiction to the ceding State without the necessity of the formal acceptance of the same by the State.

The most recent expression on the subject by this Court is S. R. A. v. MINNESOTA, 66 S. Ct. 749, 753, 90 L. ed. 663, where this Court said:

> "The acceptance by the United States at that time of the power ceded is presumed."

If the acceptance of cession is presumed, then why should not the acceptance of a retrocession of exclusive sovereignty

be presumed? This Court further held in the last cited case:

> "In this instance there were no specific words in the contract with petitioner which were intended to retain sovereignty in the United States. There was no express retrocession by Congress to Minnesota, such as sometimes occurs. There was no requirement in the act of cession for return of sovereignty to the state when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, §8, Clause 17, of the Constitution would leave numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the states. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to non-federal hands is a relinquishment of the exclusive legislative power. Recognition has been given to this result as a rule of necessity. *If such a step is necessary, Minnesota showed its acceptance of a supposed retrocession by its levy of a tax on the property.*" (Italics supplied.)

The language just quoted indicates very clearly that it was not necessary on the part of the State of Pennsylvania or the City of Philadelphia to affirmatively accept the retrocession of jurisdiction to levy and collect income taxes within Federal areas. Therefore, when Philadelphia imposed the provisions of the City Income Tax Ordinance against compensation of non-resident Federal employes performing services in Federal areas, it had the same effect

as if a separate Ordinance had been adopted in 1941 imposing such taxes specifically against such employes.

The City of Philadelphia, therefore, respectfully suggests to your Honorable Court that there appear no substantial reasons why the opinion of the Superior Court of Pennsylvania should be reviewed by this Court.

Respectfully submitted,

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